



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.18 OF 2024

Sau. Harnabai Shivnath Shinde

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Frejarpura, Amravati (City) and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P. Bhandarkar, Counsel for the applicant.
Mr. M. K. Pathan, APP for the non-applicant No.1/State.
Mr. Pankaj Navlani, Counsel for non-applicant Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 19.03.2025
PRONOUNCED ON : 25.03.2025

1. By this application, the complainant is seeking cancellation of bail granted to the non-applicant Nos.2 and 3 in connection with Crime No.543/2023 registered with Police Station Frezarpura Police Station, District Amravati for the offence punishable under Section 302 and 201 read with Section 34 of the Indian Penal Code.

2. The application is filed on the ground that the deceased Anil is her younger son, who married with Indibai i.e. non-applicant No.2 having five children from their wedlock. The deceased used to frequently visit his in-law's house in Amravati. On 05.07.2023 at about 8.20 p.m. the brother-in-law of Anil namely, Arun Solanke i.e.

non-applicant No.3 told them on telephonic call that her son Anil abused them, and took him in the morning otherwise his dead body would be sent. Deceased Anil came to the house under the influence of liquor and quarrelled with his wife, therefore, the brother of the said Indibai i.e. non-applicant No.2 – Arun dealt a blow of wooden stick on his head and caused his death. But it was informed to the police that the deceased fallen on a stone and sustained injury and death is caused. The grandson of the informant witnessed the incident and narrated the same to the present applicant, therefore, she lodged the report.

3. The non-applicant No.2 has been enlarged on regular bail in Criminal Bail Application No.1179/2023 by order dated 27.09.2023 whereas non-applicant No.3 is released on bail in Criminal Bail Application No.1417/2023 by order dated 06.12.2023. The ground raised by the applicant is that while considering the bail application, the learned Sessions Judge has observed that the non-applicant No.2 is behind bar more than two years which is a wrong observation, at the same time, the relevant material as to the evidence collected by the investigating agency was not considered which was showing the direct involvement of the non-applicant No.2. It is further contended that while considering the bail application of non-applicant No.3 also the vital

consideration that there is a direct evidence in the nature of eye witness showing involvement is also not considered by the learned Sessions Judge. Considering the nature of the offence for which capital punishment is provided and the manner in which the death of the deceased is caused by the non-applicants, learned Sessions Judge ought to have reject the application. Moreover, after they are released on bail, the witnesses are threatened, and therefore, the NCR report is also lodged on 22.12.2023. For all above these reasons, the bail granted to the present non-applicants, deserves to be cancelled.

4. Heard learned Counsel for the applicant. He reiterated the said contentions and submitted that the investigation papers shows that there was a matrimonial dispute between the deceased and his wife, however deceased was staying along with her at her parent's house. Prior to the incident, it was informed to the present applicant that the deceased is harassing them under the influence of liquor and they should take him otherwise his dead body would be sent. Thereafter, within two days death of the deceased is caused. The child witness son of the deceased is eye witness to the said incident. Thus, the involvement of both the non-applicants revealed from the investigation papers. Learned Sessions Judge has not considered the nature of the crime for which capital

punishment is provided and also not considered the manner in which the alleged incident has taken place. Thus, without considering the relevant material, granted the bail to the present non-applicants, and therefore, it deserves to be cancelled.

5. In support of his contention he placed reliance on **Ajwar Vs. Waseem** reported in **(2024) 10 SCC 768**.

6. Per contra, learned Counsel Mr. Navlani for the non-applicants submitted that there is no dispute as to the fact that the death of the deceased is caused when he was staying along with the non-applicant No.2. He invited my attention towards the complaint filed on 08.07.2023 wherein there is no reference as to the witnessing the incident by the child witness Anand. As per the recitals of the said application, the applicant was informed by her grandson Akash on the basis of the information received by him from one Rajesh Shinde. The statement of Rajesh Shinde is recorded, who nowhere states that he has informed the said Akash about the death of the deceased and the manner in which the death is caused. Subsequent to that afterthought this report is lodged on 18.07.2023 i.e. after ten days of the incident. The inordinate delay is not explained in the FIR. He further invited my

attention towards the query report which shows that death can be caused by falling on the stone or by assault also. The statement of said Rajesh Shinde shows that he received the information from his daughter Poonam, and therefore, he informed to the said Akash. Thus, he has no personal knowledge about the said incident and the statement of said Poonam is not recorded. The statement of Dr. Mohan Madhukar Kantale is also recorded. Thus, he submitted that considering the nature of the evidence, the learned Sessions Judge has released the non-applicants on bail. There was not only the consideration that the non-applicant No.2 was behind bar from two years but he has considered the nature of the evidence also. In view of that, the application deserves to be rejected.

7. Learned APP supported the contention of the learned Counsel for the applicant and submitted that the evidence collected especially the statement of the eye witness, who is the son of the deceased as well as non-applicant No.2 sufficiently shows the involvement of the present non-applicants and therefore, bail granted to them without considering the relevant material deserves to be cancelled.

8. After hearing both the sides and on perusal of the investigation papers, it reveals that

initially the applicant has filed an application addressed to the Senior P.I., Frezarpura Police Station, Amravati wherein she has narrated that she came to know about the incident from her grandson Akash, who was informed by one Rajesh Shinde, and therefore, she immediately visited at her daughter-in-law's house wherein her daughter-in-law i.e. non-applicant No.2 and her children as well as her bother were present. In the said initial application, she nowhere stated that her grandson Anand has witnessed the said incident. Thereafter, after ten days of the said incident, the report came to be lodged on 18.07.2023 wherein she has alleged that when she had been to perform the last rites on the deceased, her grandson has disclosed that her maternal uncle caused the death of the deceased and at the relevant time, the non-applicant No.2 was also present. Admittedly, the statement of said Anand was recorded after 10 to 15 days of the incident i.e. on 28.07.2023. Besides his statement, there is no other witness who have witnessed the alleged incident. The complainant has referred the statement of Rajesh Shinde who also not having the personal knowledge. He came to know about the incident from his daughter Poonam whose statement is not recorded.

9. On perusal of the order passed by the Ad-hoc District Judge – 2, Amravati it reveals that

while considering the application of non-applicant No.2, he had considered that no specific role is attributed to the non-applicant No.2. There is least possibility of destroying the evidence and pressurizing the witness. Inadvertently, it is mentioned that non-applicant No.2 is behind bar for more than two years, but that is not only the consideration, he has considered while releasing her on bail, but the nature of the evidence against her is also considered by the learned Additional Sessions Judge, Amravati while releasing her on bail. As far as the non-applicant No.3 is concerned, the reasoned order is passed by the Ad-hoc District Judge – 2 while releasing him on bail. It was also considered that the investigation is completed and charge-sheet is filed and therefore, he was released on bail. It was further observed by the learned Ad-hoc Sessions Judge that as the eye witness is residing along with the complainant, therefore no question of pressurizing the informant or her grandson arises and thereby released on bail.

10. Section 483 of the Bharatiya Nagarik Suraksha Sanhita empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused persons. Generally the grounds for cancellation of bail, broadly, are, (i)

the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days or ninety days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody.

11. In the case of **Ajwar Vs. Waseem** referred supra wherein also the Hon'ble Apex Court has considered this aspect and it held that while considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations, made against the

accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail.

12. It is further held that it is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence and the impact on the society resulting in such an order.

13. As far as the ground mentioned in the application is concerned, the trial Court has not considered the material which was collected and

ignored the relevant material and released the accused on bail. Admittedly, the Sessions Judge while releasing the non-applicant Nos.2 and 3 have considered the role attributed to him, the nature of the evidence as well as the fact that the investigation is completed and there is no possibility of tampering of the witnesses.

14. As far as the law regarding the cancellation of bail is concerned, it is well settled that considerations for grant of bail and cancellation of bail are different. As far as the cancellation of bail is concerned, the considerations for cancellation of bail are considered by the Hon'ble Apex Court in catena of decisions in ***Myakala Dharmarajam & Ors. Etc. Vs The State Of Telangana & Anr [2020 (2) SCC 743]***, wherein it is held that:

"It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail".

15. In ***Deepak Yadav Vs. State of U.P. and another*** reported in **2023 (2) Mh. L. J. (Cri) (S.C.) 196**, wherein also it is held that there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima-facie* view of the involvement of the accused are important.

16. The Hon'ble Apex Court laid down illustrative circumstances where the bail can be cancelled are as follows:-

- i) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- ii) Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is *prima-facie* misuse of position and power over the victim.
- iii) Where bail has been granted on untenable grounds.
- iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

- v) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- vi) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

17. In light of the well-settled legal position, if the facts of the present case are taken into consideration, admittedly, the Sessions Court has not considered the material which was collected during the investigation, as well as he has taken into consideration the relevant material and also the fact that the non-applicants are not at a flight risk. As observed earlier, the overwhelming and supervening circumstances are required for cancellation of bail, and one of the grounds which is to be considered that whether further incarceration of the non-applicants is required is also considered by the Sessions Court while releasing the non-applicants on bail.

18. In view of that, the application of the present applicant deserves to be rejected. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)